

# PLANNING COMMISSION MINUTES

February 20, 2002

## CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

## ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Eric Johansen, Dan Maks and Bill Young; and Alternate Planning Commissioner Steven Olson. Planning Commissioner Shannon Pogue was excused.

Development Services Director Steven Sparks, AICP, Planning Consultant Irish Bunnell, City Attorney Mark Pilliod, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

## VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

## STAFF COMMUNICATION:

On question, staff indicated that there were no communications at this time.

## OLD BUSINESS:

Chairman Voytilla opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response.

1       **CONTINUANCES:**

2

3       **A.     TA 2001-0001 – CHAPTER 40 UPDATE TEXT AMENDMENT**

4       (Continued from January 23, 2002)

5       The City of Beaverton has proposed a comprehensive update of Chapter  
6       40 (Permits and Applications) of the Beaverton Development Code. The  
7       proposed amendments will establish the development applications to be  
8       required in the City, the threshold(s) for determining the proper type of  
9       application to be required, and the approval criteria by which the applica-  
10      tion(s) will be evaluated. The existing Development Code contains many  
11      of the same applications, thresholds and approval criteria. The proposed  
12      amendment will modify the existing applications, thresholds and approval  
13      criteria and add new applications, thresholds and approval criteria.

14

15      **B.     TA 2002-0004 – CHAPTER 60 UPDATE TEXT AMENDMENT**

16      (Continued from January 23, 2002)

17      The City of Beaverton has proposed amendments to Chapter 60 (Special  
18      Requirements) of the Beaverton Development Code. The proposed  
19      amendments have been necessitated by the comprehensive updates to  
20      Chapter 40 and Chapter 50 of the Development Code. The proposed  
21      amendments will establish new special requirements for Land division  
22      Standards and Planned Unit Development. The amendments proposed to  
23      modify existing Special Use Regulations for Accessory Dwelling Unit,  
24      Accessory Uses and Structures, as well as existing special requirements  
25      for Transportation Facilities and Trees and Vegetation. The amendments  
26      also propose to delete the provisions pertaining to Historic Preservation  
27      and Temporary Use Permits.

28

29      **C.     TA 2001-0008 – CHAPTER 20 UPDATE TEXT AMENDMENT**

30      (Continued from January 23, 2002)

31      The City of Beaverton has proposed amendments to Chapter 20 (Land  
32      Uses) of the Beaverton Development Code. The proposed amendments  
33      have been necessitated by the comprehensive updates to Chapter 40 and  
34      Chapter 50 of the Development Code. The proposed amendments will  
35      also reorganize the Multiple Use zoning (Section 20.20) to make the  
36      Multiple Use zoning text read more clearly.

37

38      **D.     TA 2001-0007 – BEAVERTON MUNICIPAL CODE TEXT**  
39      **AMENDMENT**

40      (Continued from January 23, 2002)

41      The City of Beaverton has proposed amendments to the Beaverton  
42      Municipal Code. The proposed amendments have been necessitated by  
43      the comprehensive updates to Chapter 40 and Chapter 50 of the  
44      Development Code. The proposed amendments will ensure that there is  
45      consistency between the provisions of the Municipal Code and the  
46      Development Code.

Chairman Voytilla observed that at the previous Public Hearing on January 23, the Planning Commission had deliberated and requested certain information from staff, adding that staff has responded and the written information has been reviewed.

Observing that staff has no additional information at this time, Development Services Manager Steven Sparks briefly described revisions that had been made to TA 2001-0001 -- Chapter 40, for an Administrative Conditional Use permit and a suggestion to change a word within the criteria for Conditional Uses; TA 2001-0004 -- Chapter 60; TA 2001-0008 -- Chapter 20; and TA 2001-0007 -- Beaverton Municipal Code. He suggested postponing a decision on these four items until the Public Hearing on other three items has been concluded as well.

### **NEW BUSINESS:**

#### **PUBLIC HEARINGS:**

##### **A. TA 2001-0002 – CHAPTER 50 UPDATE TEXT AMENDMENT**

The City of Beaverton has proposed a comprehensive update of Chapter 50 (Procedures) of the Beaverton Development Code. The proposed amendments will establish the procedures by which the development applications will be processed in the City. The procedures include, but are not limited to, the following: 1) initiation of an application; 2) withdrawal of an application; 3) application completeness; 4) Type 1 through Type 4 application processes; and 5) appeal(s), expiration, extension and modification of decisions. The proposed amendment will modify existing procedures found in the Development Code and establish new procedures to be made a part of the Code.

##### **B. TA 2001-0003 – CHAPTER 10 UPDATE TEXT AMENDMENT**

The City of Beaverton has proposed a comprehensive update of Chapter 10 (General Provisions) of the Beaverton Development Code. The proposed amendments will establish the legal framework of the Development Code. Topics include, but are not limited to: 1) compliance; 2) interpretation; 3) zoning districts; 4) zoning map; 5) fees; 6) conditions of approval; 7) enforcement; and 8) development review participants. Development review participants include the City Council, Planning Commission; Board of Design Review; Facilities Review Committee and the Community Development Director.

##### **C. TA 2001-0005 – CHAPTER 90 UPDATE TEXT AMENDMENT**

The City of Beaverton has proposed amendments to Chapter 90 (Definitions) of the Beaverton Development Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed

1 amendments will add definitions of new terms and amend existing  
2 definitions of terms used in the Development Code.

3  
4 Mr. Sparks discussed what he referred to as several housekeeping items, as  
5 follows:

- 6  
7 ?? Correspondence from Catherine Arnold, dated February 20, 2002, with  
8 regard to several issues within Chapter 50; and  
9 ?? Suggested text with regard to expanding the role of the Hearings  
10 Officer, which has been proposed (Exhibit "B" to Chapter 10 and  
11 Chapter 50).

12  
13 Concluding, Mr. Sparks pointed out that City Attorney Mark Pilliod is available  
14 to respond to any questions with regard to the proposed Hearings Officer.

15  
16 Chairman Voytilla pointed out that each of these three chapters would be  
17 reviewed individually, beginning with Chapter 50.

18  
19 Commissioner Maks referred to TA 2001-0002 – Chapter 50 Update Text  
20 Amendment, specifically page 2, noting that staff is now suggesting exemption of  
21 the quasi-judicial zone change application for the Neighborhood Review Meeting  
22 requirement. Emphasizing that the purpose of the Neighborhood Review Meeting  
23 is to allow the applicant and the surrounding community to review a development  
24 proposal, he noted that the quasi-judicial zone change is not actually a  
25 development but a change to the City of Beaverton Zoning Map. He requested  
26 clarification of whether this is the rationale for elimination of the Neighborhood  
27 Review Meeting.

28  
29 Mr. Sparks observed that in order for the City to implement the recently adopted  
30 Land Use Element, a number of changes to the Land Use Plan would be necessary  
31 within the City of Beaverton. Noting that this is already in action and has already  
32 undergone this public review, he expressed his opinion that there is very little  
33 reason to hold yet another Neighborhood Review Meeting. He emphasized that  
34 the Land Use Map has already changed and that this amendment merely  
35 implements these changes. He pointed out that in the instances where  
36 Neighborhood Review Meetings have been scheduled for Rezones, the  
37 Comprehensive Plan has been amended at the same time, adding that this is what  
38 has actually triggered the Neighborhood Review Meeting. Noting that staff has  
39 determined in the past that these Neighborhood Review Meetings would not be  
40 conducted for Rezones, he pointed out that staff would like to specify within the  
41 code that these are exempted.

42  
43 Noting that a quasi-judicial zone change can be developer or applicant driven,  
44 Commissioner Maks expressed his preference to schedule a Neighborhood  
45 Review Meeting with regard to such an action.  
46

1 Mr. Sparks advised Commissioner Maks that a specific development proposal to  
2 which the public can respond should require a Neighborhood Review Meeting,  
3 adding that there is nothing to be gained by requiring this meeting for a simple  
4 zone change.

5  
6 Commissioner Maks referred to a previous zone change from R-7 to R-5, adding  
7 that this was located adjacent to an R-7 zone, emphasizing that this zone change  
8 had been a substantial issue and provided the public, in advance, with knowledge  
9 of what would occur in the future. He further explained that he sees no problem  
10 with discussing with the neighbors ahead of time an applicant-driven quasi-  
11 judicial zone change.

12  
13 Mr. Sparks mentioned that one of the statements within the text regarding the  
14 Neighborhood Review Meeting indicates that the City of Beaverton expects the  
15 applicant to incorporate concerns expressed by the neighborhood. Referring to  
16 Commissioner Maks' example with regard to a zone change from R-7 to R-5, he  
17 noted that there is very little that the applicant could incorporate into the proposal  
18 to change that request that could not be later presented at the Public Hearing level.  
19 He pointed out that there would be issues involving a Planned Unit Development  
20 (PUD) that would be presented afterwards, adding that this could feasibly reduce  
21 the size of average lots or affect the building massing and that these are issues that  
22 the public could conceivably address. He emphasized that there is a difference  
23 between a development proposal and a zone change.

24  
25 Commissioner Maks suggested that there might be issues with a zone change  
26 from an R-7 to an R-5, or an R-4 to an R-2, with regard to significant wetland,  
27 riparian or stream issues that might be raised through public involvement with a  
28 Neighborhood Review Meeting, adding that this might provide some assistance to  
29 the decision-making body in advance. He agreed that in many rezone issues, the  
30 public is opposed to both the development and increased density, adding that in  
31 these cases, there is very little a potential developer can do to incorporate their  
32 concerns into a project that addresses these concerns and satisfies the public. He  
33 pointed that there are some situations in which an important issue could be  
34 introduced at a Neighborhood Review Meeting.

35  
36 Commissioner Maks referred to page PR-47, specifically No. 7, with regard to the  
37 appellant or any person who testified before the decision-making authority  
38 pursuant to Section 50.50.1, and requested clarification of which page this  
39 particular section is located on.

40  
41 7:15 p.m. – Assistant City Attorney Ted Naemura arrived.

42  
43 Mr. Sparks advised Commissioner Maks that the section he cited should actually  
44 be Section 50.45.1, adding that this addresses the appeal of a Type 3 decision,  
45 rather than the appeal of a Type 4 decision, which is described in Section 50.50.1.

46

1 Commissioner Johansen requested clarification of whether he is correct in his  
2 understanding that no additional evidence could be submitted with regard to new  
3 evidence submitted at the original Public Hearing. As an example, he suggested  
4 that new evidence with regard to a Traffic Study submitted at the initial Public  
5 Hearing could not be introduced by the appellant at a subsequent Public Hearing.

6  
7 Commissioner Maks paraphrased Commissioner Johansen's example, observing  
8 that the applicant has submitted the Traffic Study at the original Public Hearing,  
9 adding that during the public testimony, a neighbor challenges information  
10 contained in this document. He requested clarification of whether this neighbor  
11 who challenged the applicant's Traffic Study would be allowed to submit a new  
12 Traffic Study that substantiates his claim that the original Traffic Study is not  
13 accurate.

14  
15 Referring to pages PR-47 and PR-48, subsection "b", lines 9 through 17, Mr.  
16 Sparks observed that Section 50.70.7 addresses the partial de novo in the appeal,  
17 and provides that if an applicant submits a Transportation Study at the time the  
18 application is deemed complete and is not amended or supplemented through the  
19 Public Hearing process, and a member of the public challenges the information, a  
20 decision made by the decision-making authority to approve the application  
21 contrary to that specific testimony, the appellant could request a partial de novo  
22 hearing in order to introduce that new evidence, which would, in this instance,  
23 consist of a Traffic Study by another Transportation Engineer, contradicting the  
24 Traffic Study that was approved. He pointed out that while the appellant could  
25 make this request and that the City Council would have to make this decision,  
26 staff would report to the appellate decision-making authority with regard to this  
27 request, adding that the first question would be why the appellant had been unable  
28 to introduce that evidence to the initial decision-making authority, specifically  
29 with regard to what the situation was that had been so unique that they had been  
30 unable to provide that information. He mentioned that staff would most likely  
31 recommend that the City Council not open the partial de novo Public Hearing,  
32 emphasizing that the public had been provided with every opportunity to  
33 introduce that evidence to the decision-making authority before the decision was  
34 made. He explained that the time from which an application is deemed complete  
35 to the time the application is reviewed by the decision-making authority is  
36 approximately 50 days, adding that the notice of the application is provided to the  
37 NAC Chairman, those property owners within 500 feet of the proposed project  
38 site, and posted on the site approximately 43 days prior to the Public Hearing. He  
39 emphasized that there is great amount of time in which anyone interested has the  
40 opportunity to review the materials and provide a response. He further explained  
41 that information and materials that are submitted right up to the date of the Public  
42 Hearing would actually provide a good reason to support a partial de novo appeal  
43 in the event that this newer information is relied on in making a decision.

44  
45 Commissioner Johansen pointed out that at some point, it is necessary for an  
46 appellant to determine whether or not to spend money on a Traffic Engineer to

1 rebut what is presented at the Public Hearing, emphasizing that the City Council  
2 would not make a decision on whether or not to accept this additional Traffic  
3 Study from the appellant until the meeting. Observing that the appellant would  
4 have already paid for the Traffic Study that may or may not be accepted, he stated  
5 that this situation involves a great deal of risk and uncertainty.  
6

7 Mr. Sparks noted that the applicant is also required to spend a lot of money in  
8 preparing for a decision by the City of Beaverton, adding that it is necessary to  
9 make certain that everyone involved play by the same rules and are able to have  
10 the same expectation for a decision to be made on a certain date. He explained  
11 that the de novo appeal basically provides for each application to involve two  
12 Public Hearings, the first of which provides a potential appellant with knowledge  
13 of the “trump”, in order to allow him to provide the “ace” for the record Public  
14 Hearing.  
15

16 Commissioner Johansen expressed his opinion that information should not be  
17 submitted on the night of the Public Hearing, adding that it is not always possible  
18 for this information to be adequately reviewed.  
19

20 Agreeing with Commissioner Johansen, Mr. Sparks pointed out that in the past,  
21 staff has discussed the possibility of not allowing information received on the date  
22 of the Public Hearing to be considered in the decision-making process. He  
23 clarified that at this point in the procedure, the applicant would have the option of  
24 a denial or requesting a continuance of the 120-day time clock to allow the  
25 decision-making authority adequate time to review the additional information.  
26

27 Commissioner Johansen requested clarification of whether Mr. Sparks is stating  
28 that in the event an applicant has not made their case adequately prior to submittal  
29 of the additional evidence presented at the time of the Public Hearing, the  
30 decision-making authority would have solid grounds to deny the application,  
31 although appropriate evidence in support of the application that might result in  
32 approval had just been provided.  
33

34 Commissioner Maks emphasized that because the evidence has been provided, the  
35 decision-making authority is obligated to consider that evidence.  
36

37 Commissioner Johansen noted that although this evidence might not be submitted  
38 in a timely manner, the decision-making authority is still bound by the 120-day  
39 rule.  
40

41 Commissioner Maks emphasized that while the applicant is aware that his  
42 evidence would be heard, the opponents do not have that same guaranty, until the  
43 City Council makes the decision on whether or not to grant a partial de novo  
44 appeal. He expressed concern with making a determination of at which point this  
45 cut-off would be made, pointing out that a Traffic Study is often a moving target.  
46

1 Mr. Sparks explained that within the proposed Development Code text, an  
2 applicant might supplement or amend an application within two weeks of the date  
3 on which the application is deemed complete, at which point the applicant is  
4 locked in. He pointed out that an amendment at a future date would require the  
5 applicant to waive the 120-day rule for at least a period of two weeks. He noted  
6 that staff is hopeful that the proposed revisions to the Development Code would  
7 provide for an improved application process,

8  
9 Expressing concern with being fair to the applicant, Commissioner Maks  
10 emphasized that Washington County does not always respond with regard to  
11 access issues even by the date of the Public Hearing, emphasizing that this access  
12 approval is necessary.

13  
14 Mr. Sparks clarified that prior to the City Council decision on whether or not  
15 there would be a de novo appeal, project material in the record must be submitted  
16 within a certain period of time after the application has been deemed complete.  
17 He noted that at some point, a potential appellant must determine whether or not  
18 to participate through a letter, oral testimony, or retaining the services of their  
19 own expert.

20  
21 Commissioner Maks emphasized that Commissioner Johansen is referring to  
22 information that is submitted late, such as a correction to an error in the  
23 applicant's Traffic Study, noting that the applicant could submit this corrected  
24 Traffic Study one week prior to the Public Hearing. He mentioned that State law  
25 allows the applicant to submit all evidence up to the date of the Public Hearing.

26  
27 City Attorney Mark Pilliod mentioned that while there are potentially a lot of  
28 different impacts on the decision beyond the deadline for staff review and  
29 comment, every attempt should be made to encourage the applicant to waive the  
30 120-day rule.

31  
32 Commissioner Maks pointed that over the past 8 years, he has observed numerous  
33 situations in which the applicants have either presented or not presented the  
34 necessary information on the night of the Public Hearing, although staff had  
35 previously requested the information.

36  
37 City Attorney Mark Pilliod commented that the hearing process under State law is  
38 geared towards allowing an applicant who is confronted with unanticipated and  
39 potentially damaging material to request a continuance and extend the 120-day  
40 rule, adding that this would provide this applicant with at least an additional  
41 week, under State law. He further explained that State law does not permit the  
42 decision-making authority to refuse to accept material, adding that the City  
43 Council is often presented with material that is considerably different from that  
44 presented to either the Planning Commission or Board of Design Review. He  
45 pointed out that it doesn't make a great deal of sense to allow any decision-  
46 making authority to go through what he referred to as a charade. Expressing his



1 opinion that this situation presents a quandary, he pointed out that it is difficult to  
2 quantify this last minute information and that some of this unanticipated evidence  
3 could occur after the close of the Public Hearing is not equal to that which  
4 actually occurred at the Public Hearing.

5  
6 Commissioner Maks noted that the reference is to the unanticipated event that  
7 occurred after the close of the Public Hearing.

8  
9 Mr. Pilliod agreed, observing that it would be necessary to measure from the point  
10 in time when the written decision had been rendered, adding that it might be  
11 possible to suggest some language change that would encompass concern that  
12 substantially different material could be presented.

13  
14 Stating that he agrees with both Mr. Sparks and Mr. Pilliod, Commissioner Maks  
15 commented that the charade is much too common and expressed concern with  
16 making certain that all citizens are playing by the same rules as the applicant and  
17 also being treated fairly with regard to the issues.

18  
19 Mr. Sparks pointed out that it is evident that it is necessary for staff to caucus on  
20 some of the suggested changes, adding that staff would discuss the issues and  
21 present suggested revisions.

22  
23 Following a discussion with regard to de novo appeal versus on the record appeal,  
24 Mr. Sparks advised Commissioner Barnard that rebuttal may include new  
25 evidence, adding that the applicant has the opportunity to rebut evidence that is  
26 provided during public testimony. He further explained that if the applicant  
27 provides new evidence during the rebuttal phase, the public is provided with an  
28 opportunity to respond to that new evidence.

29  
30 Commissioner Barnard clarified that within the Public Hearing process, after the  
31 applicant presents the material and the public provides testimony, the applicant is  
32 only permitted to rebut any new evidence provided by the public. Emphasizing  
33 that the applicant is not allowed to submit any new evidence, he pointed out that  
34 because the applicant is only permitted to discuss issues that support arguments  
35 against evidence provided by the public, rebuttal testimony is restricted.

36  
37 Mr. Sparks explained that the second stage rebuttal is restricted because no new  
38 evidence is allowed, pointing out that this terminates non-applicant participation.

39  
40 Commissioner Barnard stated that the applicant's rebuttal is restricted to only  
41 issues that have been brought forth by the public.

42  
43 Mr. Sparks agreed, observing that there has been the rare example in which an  
44 applicant provides evidence that had not been in the original presentation, at  
45 which time the Chairman provides the public the opportunity to testify with  
46 regard to that new information.

1 Commissioner Barnard requested clarification of whether such an action conflicts  
2 with the basic procedure.

3  
4 Chairman Voytilla pointed out that because the information has been provided  
5 and cannot be eliminated at that point, it is necessary to allow the public the  
6 opportunity to testify with regard to the new information.  
7

8 Mr. Pilliod suggested that staff should examine the standards by which the City  
9 Council would decide to reopen or partially reopen the Public Hearing to accom-  
10 modate materials and information submitted during that final hour. Referring to  
11 Statute 197.763(4)(2), he pointed out that all documents or evidence relied upon  
12 by the applicant shall be submitted to the local government and made available to  
13 the public. He noted that by virtue of this information having been presented at a  
14 Public Hearing, or distributed to members of the decision-making authority, it is  
15 at least theoretically, though not practically, available to the public. He pointed  
16 out that based upon that standard, it would be feasible to establish a local rule that  
17 would basically make that information available to the public. Emphasizing that  
18 this could be defined more precisely in the City of Beaverton, he noted that as  
19 long as this is not inconsistent with the statute, a rule could be created. He  
20 explained that as long as the applicant is aware that the submittal of new evidence  
21 during this final hour effectively creates the risk of a full de novo hearing before  
22 the City Council, they might be inclined to be more diligent with regard to  
23 presenting all information to the decision-making authority at an earlier stage.  
24

25 Expressing his approval of Mr. Pilliod's suggestion with regard to a local rule  
26 establishing a procedure for final hour evidence, Commissioner Maks questioned  
27 the possibility of enforcing what staff has already defined, specifically within two  
28 weeks after the application has been deemed complete.  
29

30 Planning Consultant Irish Bunnell responded that two weeks following the date  
31 that an application is deemed complete is actually the deadline for submittal of  
32 information for preparation of the Staff Report.  
33

34 Observing that the City of Beaverton requires submittal of all evidence to be  
35 included in the Staff Report no later than two weeks after the date that an  
36 application is deemed complete, Commissioner Maks pointed out that this point in  
37 time is also viewed as the date that materials for public review are to be available.  
38 Emphasizing that the penalty for late submittal is a complete de novo Public  
39 Hearing, Commissioner Barnard suggested that any evidence presented beyond  
40 the two weeks after the application has been deemed complete should require an  
41 automatic extension of the 120-day rule.  
42

43 Commissioner Maks advised Commissioner Barnard that State law provides that  
44 new evidence can be submitted at any point.  
45

1 Commissioner Barnard pointed out that although State law allows this evidence to  
2 be submitted, it does not stipulate that there cannot be a penalty for the submittal  
3 of late evidence, adding that it is possible to require an extension of the 120-day  
4 rule.

5  
6 Pointing out that it is not possible to require an extension of the 120-day rule,  
7 Commissioner Maks emphasized that the applicant controls the clock, adding that  
8 they are allowed to present any new evidence and that they can only be denied  
9 based upon facts or findings, regardless of what has been submitted.

10  
11 Mr. Pilliod expressed his concern with the 14-day time frame, observing that the  
12 statute references availability of the Staff Report 7 days prior to the Public  
13 Hearing. He pointed out that with additional documents or evidence provided by  
14 any party, the government might allow a continuance or leave the Public Hearing  
15 open. He explained that it appears that the 7-day time frame referenced within the  
16 statute appears to be that measure of whether material or new evidence is  
17 "available to the public", because it has been submitted 7, not 14, days prior to the  
18 Public Hearing. He noted that he would like to have the opportunity to determine  
19 whether this 14-day deadline is within legal limitations.

20  
21 Commissioner Maks emphasized that with everyone playing on the same ball  
22 field, if the application is deemed complete, both parties should have equal time  
23 and opportunity to address the issues.

24  
25 Chairman Voytilla pointed out that staff would be working on these issues further.

26  
27 Referring to Mr. Straus' letter, Commissioner Maks requested clarification of  
28 whether the Board of Design Review would be meeting on a weekly basis.

29  
30 Mr. Sparks pointed out that while Mr. Straus' letter references three main  
31 concerns, his primary concern is the possibility that the Board of Design Review  
32 would be meeting weekly. At the request of Commissioner Maks, he clarified  
33 that both the Planning Commission and Board of Design Review follow the same  
34 Development Code and that a consolidated application would be based upon the  
35 design review criteria, rather than the conditional use criteria.

36  
37 Chairman Voytilla requested questions or comments with regard to TA 2001-  
38 0003 – Chapter 10 Update Text Amendment.

39 Mr. Sparks emphasized that this is the appropriate time to ask any questions with  
40 regard to the Hearings Officer.

41  
42 Observing that although he understands many of the advantages with regard to a  
43 Hearings Officer, Commissioner Maks pointed out that his experiences with other  
44 entities have resulted in nothing but complaints about Hearings Officers. He  
45 explained many individuals prefer to address the City of Beaverton, rather than  
46 Washington County, because land use actions are reviewed and determined by

1 citizens. Emphasizing that his issue is that if it is not broken, why fix it, he noted  
2 that he is proud to serve on the Planning Commission, adding that both applicants  
3 and attorneys have advised him that the City of Beaverton has one of most well  
4 read and well prepared Planning Commissions in the State of Oregon. He  
5 mentioned that whether they agree or disagree with the decisions of the Planning  
6 Commission, many citizens have expressed their appreciation of their efforts.  
7 Noting that many Hearings Officers are also land use attorneys, he mentioned that  
8 while he has a great deal of respect for land use attorneys, he does not agree that  
9 these local decisions with regard to local impact should be made by a land use  
10 attorney who resides in Clackamas County. He emphasized that those individuals  
11 who live in or drive through the neighborhood and understand the local issues  
12 should make a decision of this nature. He mentioned that many of the  
13 applications addressed through the Development Code have involved dual  
14 applications heard by one decision-making authority, noting that a Hearings  
15 Officer would involve a major difference in the way land use is determined in the  
16 City of Beaverton. He emphasized that while everyone is not always satisfied  
17 with the decisions, he lives in and serves the City of Beaverton because the  
18 citizens themselves actually make the decisions with regard to their own  
19 community.

20  
21 Mr. Sparks advised Commissioner Maks that Washington County utilizes the  
22 process involving a Hearings Officer, adding that this Public Hearing provided an  
23 opportunity to present an option or alternative.

24  
25 Commissioner Maks expressed his appreciation of the efforts of staff with regard  
26 to this issue, observing that while he is aware that the applicants do not always  
27 approve of the single process with dual hearings, he is opposed to a Hearings  
28 Officer.

29  
30 Commissioner Johansen pointed out that while the debate with regard to the  
31 Hearings Officer is very interesting, he is more interested in completing the  
32 updates to the Development Code. He suggested that the issue with the Hearings  
33 Officer should be separated and readdressed at a later time, adding that he would  
34 like to complete the remainder of the update process at this time.

35  
36 Commissioner Bliss expressed his agreement with Commissioner Johansen,  
37 adding that he would like to separate the issue of the Hearings Officer and  
38 continue with the remainder of the update process.

39 Mr. Pilliod observed that staff intends to recommend that the Public Hearing not  
40 be concluded this evening, adding that members of the public should be allowed  
41 to address their concerns at this time or at a continued Public Hearing. He pointed  
42 out that the Mayor would determine at which point this issue would be placed on  
43 the City Council Agenda, adding that he is not certain how quickly this would be  
44 resolved. Noting that a Hearings Officer does not provide any foolproof, certain  
45 method of avoiding problems and issues, he expressed his opinion that they could  
46 be minimal or reduced in frequency. Referring to Commissioner Maks'

1 suggesting that a hearings body consisting of local citizens would have the benefit  
2 or advantage of familiarity with the local situation, he requested clarification of  
3 how this is fair to an applicant who might have no such knowledge. He expressed  
4 his opinion that this would be another method for introducing ex parte evidence  
5 into the record, adding that the applicant would be at a clear disadvantage for “not  
6 knowing the local situation” and that in his opinion, the decision-making body  
7 can not base a decision upon this information unless it is made part of the record.

8  
9 Commissioner Maks emphasized that the burden of proof is upon the applicant,  
10 noting that the criteria addresses compatibility with and a minimal impact upon  
11 the surrounding neighborhood.

12  
13 Mr. Pilliod agreed that the burden of proof is upon the applicant, who must  
14 address all applicable criteria, including compatibility. He clarified that if a  
15 hearings body chooses to base a decision upon knowledge of the local situation  
16 that is not otherwise presented as evidence at the Public Hearing, it is not a valid  
17 decision.

18  
19 Commissioner Maks expressed his agreement with Mr. Pilliod, noting that if an  
20 applicant presents evidence indicating that something is compatible within a  
21 neighborhood, whether he resides in that neighborhood or not, if nobody refutes  
22 that evidence or provides opposing evidence, it is necessary to follow the criteria  
23 and approve the application. He emphasized that opposing parties create a better  
24 filter, rather than a bias.

25  
26 Mr. Pilliod pointed out that dependent upon the quality of the Hearings Officer  
27 making a decision, it is typical that in addition to rendering an approval or denial,  
28 this individual would also prepare findings that quite precisely address evidence  
29 presented within the documentation and testimony presented at the Public  
30 Hearing. He mentioned that neither the Planning Commission nor the Board of  
31 Design Review engages in that level of analysis, adding that they rely almost  
32 entirely upon the direction presented within the Staff Report. He explained that  
33 no matter how well prepared this Staff Report is, it cannot possibly address  
34 evidence presented by way of testimony during the Public Hearing. He pointed  
35 out that because of this issue, the decision is relatively easy to attack, either  
36 because it is based upon a faulty analysis of the legal criteria or due to the lack of  
37 substantial evidence within the record to support the conclusion. He emphasized  
38 that these flaws are what creates long evenings at the City Council level, adding  
39 that it is more likely that a Hearings Officer would complete the necessary  
40 analysis and prepare the subsequent findings on a level that has not been  
41 occurring. He pointed out that future applications would put the Planning  
42 Commission in the position of addressing design issues with which they have  
43 limited experience. He discussed allowing for the finale of certain types of  
44 decisions, emphasizing that the decision-making body that ultimately matters  
45 consists of the citizens who are elected, adding that these individuals are obligated  
46 to listen to their electors, local citizenry and business property owners.

1 Commissioner Maks requested clarification of where an appeal of the Hearings  
2 Officer in Washington County is addressed.

3  
4 Mr. Pilliod commented that it is his understanding that the Board of County  
5 Commissioners has been removed from that process, adding that this might be the  
6 basis for the criticism of that process.

7  
8 Observing that this issue dates back 10 or 12 years, Commissioner Maks pointed  
9 out that this is a new criticism. He emphasized that the Planning Commission is  
10 always open to suggestions with regard to improving their performance,  
11 expressing his opinion that although they are basically unfamiliar with design  
12 review issues, they will perform just as well as, if not better than, 3 new members  
13 of the Board of Design Review who have never reviewed a land use application or  
14 the Development Code.

15  
16 On question, Chairman Voytilla received no questions or comments with regard  
17 to TA 2001-0005 – Chapter 90 Update Text Amendment.

18  
19 8:19 p.m. to 8:28 p.m. – break.

20  
21 **PUBLIC TESTIMONY:**

22  
23 **DAVID JACKSON**, Co-Chairman of the West Beaverton NAC, expressed  
24 appreciation for the opportunity to address the Planning Commission. He  
25 mentioned last Thursday's NAC meeting with regard to land use appeals, adding  
26 that a unanimous vote had resulted in a request that the Type 3 decision appeals  
27 be de novo, rather than on the record. Referencing the definition of a Type 3  
28 decision, including substantial discretion and broad public interest, adding that  
29 broad public interest requires the availability of the broadest public input. He  
30 noted that if the purpose of this update is to provide for greater efficiency of time  
31 and resources, it should be noted that the public interest is not being expressed at  
32 a time when the public anticipates they would have the opportunity to express  
33 their opinion. Clarifying that the reality is that most individuals do not begin  
34 paying attention to an issue until it has gone beyond the Planning Commission, he  
35 emphasized that the public expects to have the ability to go to the City Council  
36 and present their case. He agreed that there may be the appearance of a charade  
37 from time to time and expressed his opinion that the Planning Commission is the  
38 "A Team". He reiterated that in the interest of the public being allowed to have  
39 the broadest amount of input, Type 3 appeals should be on a de novo basis.

40  
41 Mr. Jackson stated at as a private citizen, he found his experience before the  
42 Washington County Hearings Officer to be very condescending, demeaning and  
43 degrading, adding that he is opposed to a Hearings Officer in the City of  
44 Beaverton.

45

1 Commissioner Young requested clarification of Mr. Jackson's suggestion that the  
2 Type 3 hearings would be de novo, adding that this would institutionalize the  
3 business of keeping the powder dry and that this would be considered the standard  
4 way of doing business.

5  
6 Mr. Jackson stated that Commissioner Young is essentially correct, adding that  
7 this would, in essence, institutionalize the chaos that now exists.

8  
9 Chairman Voytilla referred to Mr. Jackson's observation that generally people  
10 don't get concerned with an application until through Planning Commission,  
11 pointing out that information is provided through the mail, property is posted and  
12 Neighborhood Review Meetings are scheduled. He expressed his opinion that  
13 there is a great deal of opportunity for public input prior to an application being  
14 heard by the Planning Commission, requesting clarification, from the NAC's  
15 perspective, of why this notification process is not more effective.

16  
17 Mr. Jackson commented that he is not certain that this process can be improved,  
18 observing that on a good night, 10 or 15 individuals might attend a NAC Meeting.  
19 He expressed his opinion that there is a basic lack of civic responsibility among  
20 the majority of the population, adding that as a result, most individuals are very  
21 reactive and don't become concerned with an issue until it hits home. He pointed  
22 out that there is generally little or no publicity with regard to a specific application  
23 until a decision has been rendered.

24  
25 Chairman Voytilla expressed his concern with receiving public input throughout  
26 the entire process, noting that the City of Beaverton's public notification process  
27 is superior to any he has observed in other jurisdictions and that people are only  
28 now beginning to pay attention.

29  
30 Expressing his appreciation of the efforts of staff and the Planning Commission,  
31 Mr. Jackson emphasized that updating the Development Code is a monumental  
32 task.

33  
34 Referring to Mr. Jackson's position as Chairman of the West Beaverton NAC,  
35 Commissioner Bliss pointed out that he identifies with his frustration with  
36 convincing more individuals to become active in his neighborhood. He  
37 mentioned that everyone involved – from the City Council, to the Planning  
38 Commission, CCI and the NACs – is a part of a system that allows an individual  
39 to put participation off until the last-ditch effort on the City Council level. He  
40 expressed his opinion that the annual mailings that are provided should advise  
41 these individuals that their failure to become involved and participate in their  
42 neighborhoods and what is occurring would prevent them from being allowed to  
43 provide input on an issue at a later time.

44  
45 Mr. Jackson agreed with Commissioner Bliss with regard to the frustration level,  
46 expressing his opinion that more effective efforts are available, possibly through a

1 public relations campaign with the assistance of the Neighborhood Office. He  
2 pointed out that even the best efforts still won't get the best possible participation  
3 with regard to land use action, noting that most individuals do not get involved  
4 until it affects them, generally late in the game. Observing that most of these  
5 individuals are not actively involved, he expressed his opinion that there is a  
6 general apathy, adding that he prefers to leave the door open for public input up  
7 until the last minute.

8  
9 Commissioner Maks expressed his appreciation of and agreement with Mr.  
10 Jackson, adding that his greatest concern is with making certain that there are  
11 good developments within the City of Beaverton.

12  
13 **IKE McCARLEY** stated that in the interest of brevity, he is in agreement with  
14 Mr. Jackson's observations, adding that because he is aware that there are several  
15 other members of the public who wish to testify, he has nothing new to add.

16  
17 **KAREN SCHOUTEN**, Co-Chairman of the West Beaverton NAC, observed that  
18 in addition to agreeing with Mr. Jackson's statements with regard to a de novo  
19 hearing, she would like to emphasize that as citizens, as opposed to expert  
20 developers, many individuals do not always know what to look for and may  
21 require more time to understand and rally with regard to an issue. Pointing out  
22 that private citizens also do not have access to a great deal of money with which  
23 to hire professionals, she noted that it could take longer to collect information  
24 with regard to all of the issues and they would like to retain the opportunity to  
25 introduce new issues at a later time.

26  
27 Chairman Voytilla questioned whether the West Beaverton NAC has appealed  
28 any project approved by the Planning Commission.

29  
30 Ms. Schouten advised Chairman Voytilla that the West Beaverton NAC has  
31 appealed numerous projects, including Davis Road, Murray Crossing  
32 Development and Aspen Woods, sometimes in conjunction with other NACs.  
33 She pointed out that some projects could conceivably create issues with more than  
34 one NAC, adding that while the Aspen Woods Nature Park had been of citywide  
35 significance, they did not involve rezoning or amendments to the Development  
36 Code. She explained that although the NAC co-chaired numerous meetings with  
37 the developer, Polygon NW, it had been extremely difficult to be aware of all of  
38 the issues with regard to this complex project at the time of the initial meetings.  
39 Commissioner Maks requested clarification of which project on Davis Road Ms.  
40 Schouten is referring to.

41  
42 Ms. Schouten advised Commissioner Maks that she was referring to the project  
43 on Davis Road from SW Chehalem Road to SW Allen Boulevard, adding that she  
44 believes it was entitled the Allen Boulevard Extension.

45  
46 Commissioner Maks questioned specifically which land use action this involved.



1 Ms. Schouten informed Commissioner Maks that the proposal had been to change  
2 the street to four lanes, adding that the bicycle lanes were to be removed and the  
3 street would be narrower in some areas.

4  
5 Commissioner Maks pointed out that this proposal had involved design issues.

6  
7 Commissioner Johansen mentioned that he recalls that this proposal involved a  
8 departure from the design standard for that particular street.

9  
10 Commissioner Maks clarified that this involved a CIP process, rather than an  
11 actual land use action.

12  
13 **CATHERINE ARNOLD** referred to the letter she had submitted, observing that  
14 this letter has already been received and entered into the record. Observing that  
15 she is speaking on behalf of herself, rather than CCI, she pointed out that she is  
16 concerned with the de novo issue. She pointed out that one of the greatest  
17 problems is that private citizens need to determine how to get on board, from the  
18 beginning, with regard to an issue, adding that they have to be aware of which  
19 criteria they have to address and whether it would be necessary to retain a land  
20 use attorney. She discussed several common misperceptions, noting that while  
21 these individuals are correct in their assumption that they get more time, what  
22 typically occurs is that while an applicant appeal can involve two or three months  
23 before the City Council hearing, the average time appears to be only three or four  
24 weeks. She stated that the primary issue is how to get these individuals better  
25 informed and involved from the beginning of the process, emphasizing that the  
26 clock goes quickly. She expressed her personal opinion that developers as  
27 appellants appear to be more successful at getting their issues overturned than a  
28 typical citizen in the same situation. Noting that late evidence is a huge issue, she  
29 emphasized that it is difficult and not fair to be dealing with a moving target and  
30 that it is not always easy to determine which evidence is relevant and valid. She  
31 pointed out that while an applicant has the opportunity to request a continuance if  
32 they have more information to submit, this option is not available to the public,  
33 emphasizing that this does not create a fair playing field. Concluding, she  
34 expressed her concern with the issue regarding the Hearings Officer, adding that  
35 this should not become final before the Code Review Advisory Committee  
36 (CRAC) has an opportunity to review the issues.

37  
38 Commissioner Maks commented that a quasi-judicial rezone often involves a  
39 subsequent application, adding that the Planning Commission only considers the  
40 criteria with regard to the rezone issue and that issues with regard to a specific  
41 application are not appropriate at that time. Emphasizing that this is for a very  
42 good reason, he noted that an unethical applicant could submit information with  
43 regard to an application at a Neighborhood Review Meeting and obtain a rezone  
44 and a Planned Unit Development (PUD), and then present an entirely different  
45 PUD at the Planning Commission at a later time. Agreeing that some of these  
46 issues do not provide the public with a great deal of information on which to

1 respond to at the Neighborhood Review Meeting level, it does provide them with  
2 information of what to anticipate in the future.

3  
4 Commissioner Maks suggested that CCI should become involved in and address  
5 land use issues on a State level, adding that because very few citizens are  
6 involved at this time, they have a tendency to become trampled.

7  
8 Referring to the rezone issue, Commissioner Barnard emphasized the necessity of  
9 considering all possible developments that could occur within a rezone.

10  
11 On request, **JACK FRANKLIN** was assured that his e-mail letter, dated January  
12 23, 2002, had been received and distributed at the meeting on that same date.  
13 Observing that he agrees with the statements made by the Planning  
14 Commissioners, staff and the public, he noted that he is in favor of the de novo  
15 hearing. Pointing out that the average citizen does not have a clue with regard to  
16 what is occurring or how to address the issues appropriately, he emphasized that  
17 they need to become informed. Noting that the public only participates with  
18 regard to contentious issues, he emphasized that there is too much apathy among  
19 the public. Expressing his opinion that there is too much emphasis placed upon  
20 the concept of "A Team"/"B Team" processes, he noted very few applications are  
21 actually appealed and that enough money would provide an expert to attest to  
22 anything. He suggested the possibility of creating a Task Force to address the few  
23 appeals that do occur, adding that although the 120-day rule is an issue, this rule  
24 has rarely been violated.

25  
26 Commissioner Bliss observed that he does not deny the fact that this discussion  
27 and testimony should not be occurring with regard to de novo, adding that this  
28 language actually existed as early as December 19, 2001. Observing that this had  
29 not appeared to be an issue at that time, he requested clarification of why it is an  
30 issue at this time.

31  
32 Mr. Franklin informed Commissioner Bliss that in his opinion, this has become an  
33 issue because an individual or two had expressed frustration with what they  
34 considered the lack of adequate CCI involvement in this process. Pointing out  
35 that the majority of people in the audience at this time are CCI members, he  
36 emphasized that they are here to provide input, rather than represent CCI.

37  
38 Emphasizing that he welcomes and appreciates this input, Commissioner Bliss  
39 noted that the Planning Commission has been addressing this issue for an  
40 appropriate amount of time and that he would like to complete the process.

41  
42 Observing that he understands Commissioner Bliss' concerns, Mr. Franklin stated  
43 that while he has no appropriate response, many of the members of CCI have only  
44 recently become aware of what is occurring.

45

1       Expressing his appreciation of Mr. Franklin's comments, Commissioner Maks  
2       agreed that while it is not a simple issue, the "A Team"/"B Team" issue does  
3       occur frequently, most often with an applicant appeal. Noting that Mr. Franklin  
4       would agree if he had the opportunity to point them out, he explained that he  
5       would also understand why it appears to occur more frequently with developer  
6       appeals.

7  
8       Mr. Franklin commented that a developer spends a great deal of money in an  
9       effort to develop their plans, emphasizing that the goal is to maximize profits.

10  
11       Commissioner Maks clarified that the Planning Commission is just as concerned  
12       with the opinion of two citizens as with that of 200 citizens.

13  
14       Mr. Franklin discussed the rebuttal situation, noting that following the  
15       presentation, public testimony and applicant rebuttal, he has after presentation  
16       completed, citizens speak, applicant rebuts, in spite of Mr. Sparks' comments, he  
17       has never observed a situation in which the citizens were provided an opportunity  
18       to rebut the rebuttal.

19  
20       Commissioner Maks advised Mr. Franklin that citizens are not provided with an  
21       opportunity to rebut the applicant's rebuttal because the rebuttal is limited to only  
22       the issues that are raised in public testimony, emphasizing that it is the duty of the  
23       Chairman to make certain that the applicant remains within those confines.

24  
25       **ANDREW RAPP** read written testimony, dated February 19, 2002, prepared by  
26       Susan Cook, with regard to the proposed change to the Development Code with  
27       regard to appealing Planning Commission and Board of Design Review decisions  
28       to the City Council, specifically on the record and de novo appeals.

29  
30       Mr. Rapp added his own comments with regard to the issues discussed in Susan  
31       Cook's letter, and discussed the de novo versus on the record appeal issue.  
32       Observing that he prefers to look for the exception, he referred to the previous  
33       Haggen's Development, adding that at that time, the public was not aware of all  
34       of the issues with regard to the rock quarry and the methane gas. He pointed out  
35       that the subsequent involvement of DEQ did provide the neighborhood with a  
36       safer neighborhood than they would have had otherwise, and questioned whether  
37       on the record testimony would have limited the public to presenting the facts that  
38       they felt necessary to ensure the involvement of DEQ and make necessary  
39       changes. Emphasizing that he does not want to witness any additional exceptions  
40       such as Hagen's, he pointed out that the neighbors are obtaining additional  
41       information on a weekly basis, only to be informed that it is not relevant. He  
42       mentioned that the situation has worked out for the best, observing that although  
43       the development is occurring, numerous safety measures are involved.

44  
45       Mr. Rapp referred to Section 50.70.7, which specifies that the City Council can  
46       consider reopening the record, expressing his opinion that this is inappropriate.

1 Noting that it is either black or white, open or closed, he emphasized that politics  
2 should not be involved in the Development Code. He requested clarification of  
3 whether Commissioner Maks blames bad development on bad developers.  
4

5 Commissioner Maks advised Mr. Rapp that bad developers are not always to  
6 blame for bad development.  
7

8 Mr. Rapp expressed his opinion that a poor Development Code is what allows bad  
9 development to occur in the first place, and provided Mr. Sparks with a copy of  
10 Susan Cook's letter from Mr. Rapp, which was entered into the record.  
11

12 **JIM PERSEY** mentioned that although he is Chairman of the Greenway NAC,  
13 he is speaking on his own behalf with regard to the Development Code Update  
14 issues. Noting that he served on the CRAC Committee and provided assistance  
15 with the Development Code Update, he pointed out that even members of CCI do  
16 not have adequate knowledge of the Development Code. He observed that he  
17 believes that all appeals are de novo unless the appellant requests on the record.  
18 Noting that he objects to on the record appeals as it is currently written, he  
19 mentioned that he is in the process of appealing a Traffic Commission decision  
20 with regard to SW Hall Boulevard on behalf of the Greenway NAC. He read  
21 information provided within Development Code Section 6.02.065, as follows:  
22

23 "City Council review of appeals shall be on the record. Any person may  
24 testify before the City Council, but testimony will be limited to issues  
25 previously raised before the Traffic Commission. The City Council, on its  
26 own motion, may hold a de novo hearing that would allow new evidence  
27 to be presented."  
28

29 Mr. Persey expressed his opinion that all appeals should be on the record, adding  
30 that the City Council should retain the right to revert to de novo in certain  
31 situations. He pointed out that the partial de novo appears extremely difficult to  
32 attempt with any measure of success.  
33

34 On question, no one else testified with regard to the Development Code Update.  
35

36 Commissioner Maks referred to a previous discussion with regard to conditioning  
37 Conditional Use Permits, requesting clarification of whether the current  
38 Development Code allows the Planning Commission to condition a Conditional  
39 Use Permit.  
40

41 Observing that the Development Code is silent with regard to that specific  
42 question, Mr. Sparks expressed his opinion that staff had misunderstood the intent  
43 of the Planning Commission. He suggested that such a Condition of Approval  
44 would have to be applicable to the approval criteria while also remaining true  
45 whether it is something that would be allowed outright within the Development  
46 Code for automatic review or in a special case-by-case basis for review. He

1 pointed out that staff feels that with Conditions of Approval, if these Conditions  
2 of Approval are not being met, as an administrative function, it is necessary for  
3 the Community Development Division to pursue the enforcement of fulfilling  
4 those Conditions of Approval. He pointed out that one of the specific tools of  
5 enforcement is to schedule a Revocation Hearing of a Conditional Use or other  
6 application at the City Council level.  
7

8 Commissioner Maks mentioned that adequate enforcement mechanism is not  
9 available, emphasizing that because the actual implementation of this mechanism  
10 is difficult, he is aware of a church that has not yet met Conditions of Approval  
11 that were approved approximately four years ago. He noted that although these  
12 Conditions of Approval have not yet been addressed, the church is still operating  
13 and enforcement has not occurred.  
14

15 Mr. Bunnell suggested that this issue should be brought to the attention of the  
16 administration, adding that they need to be aware that this enforcement is not  
17 occurring.  
18

19 Chairman Voytilla pointed out that many of these Conditions of Approval involve  
20 issues with regard to noise and hours of operation, emphasizing that the City of  
21 Beaverton has no resources to go out at 3:00 a.m. to respond to a neighbor  
22 reporting a problem, adding that Code Enforcement is an extremely difficult  
23 issue.  
24

25 Mr. Sparks suggested the possibility that Code Enforcement could be an  
26 administrative function, adding that staff could review that information and  
27 determine whether a Condition of Approval is being met. Observing that this  
28 should not necessarily involve the Planning Commission, he expressed his  
29 opinion that staff could remedy such a situation on its own.  
30

31 Commissioner Maks pointed out that the issue of non-compliance involves more  
32 than Conditional Use Permits.  
33

34 Commissioner Bliss stated that while he appreciates the discussion, the City of  
35 Beaverton does have an administrative process, adding that the Planning  
36 Commission should not be involved with Code Enforcement.  
37

38 Mr. Sparks noted that the City of Beaverton could hold an applicant responsible  
39 for Conditions of Approval, adding that these mechanisms are clarified within the  
40 proposed Development Code. He pointed out that whether a property owner is  
41 the original developer or not, there is a responsibility to continue to meet the  
42 approved Conditions of Approval.  
43

44 Observing that several options are available at this time, Chairman Voytilla stated  
45 that the Public Hearing could be continued or that the public portion of the Public

1 Hearing could be left open, adding that the issue regarding the Hearings Examiner  
2 must be considered.

3  
4 Commissioner Maks suggested approving all of the chapters, with the exception  
5 of Chapter 50, adding that he would like to see what staff is able to come up with  
6 regarding partial de novo appeals.

7  
8 Chairman Voytilla pointed out that the Public Hearing is still open from a  
9 procedural standpoint.

10  
11 Commissioner Maks reiterated that with the exception of Chapter 50, which  
12 includes the issue regarding partial de novo appeals, he would like to approve all  
13 of the chapters. Observing that this action would also effectively eliminate the  
14 Hearings Officer at this time, he expressed his opinion that this issue could be  
15 reintroduced at some future point.

16  
17 Chairman Voytilla requested clarification of whether testimony should be  
18 permitted with regard to staff's response to issues in Chapter 50.

19  
20 Commissioner Maks expressed his opinion that it would be necessary to allow  
21 testimony with regard to staff's response to issues in Chapter 50.

22  
23 Mr. Sparks suggested that all seven chapters should be continued to a future date,  
24 noting that although it is unlikely, a change to Chapter 50 could potentially  
25 require related changes in other chapters.

26  
27 Commissioner Maks requested clarification of how the issue with regard to de  
28 novo appeals could require changes within the other chapters.

29  
30 Mr. Sparks advised Commissioner Maks that he is 99% certain that changes with  
31 regard to de novo appeals within Chapter 50 would not require any changes  
32 within the other chapters.

33  
34 Commissioner Barnard expressed his opinion that action should be taken upon  
35 these applications, with the exception of Chapter 50, adding that Exhibit "B"  
36 should not be included.

37  
38 Chairman Voytilla requested clarification of how the individual Planning  
39 Commissioners feel with regard to taking action on the applications.

40  
41 Commissioner Maks expressed his opinion that tweaking the language of Chapter  
42 50 would not affect the remaining seven chapters.

43  
44 Mr. Bunnell observed that while it is not likely that changes to Chapter 50 would  
45 affect the remaining six chapters, because the seven chapters are a package, these  
46 chapters would not move forward without Chapter 50.

1 Noting that he is aware that all seven chapters would take effect simultaneously,  
2 Commissioner Maks emphasized that after two years on Code Review, he would  
3 like to take some action.

4

5 Chairman Voytilla agreed that the situation is frustrating.

6

7 Observing that he would like to have the appearance of progress, Commissioner  
8 Johansen stated that he would defer to staff's preference to leave all seven  
9 chapters open until the next Public Hearing.

10

11 Emphasizing that he prefers to take action at this time, Commissioner Barnard  
12 stated that he is struggling to understand how any change in Chapter 50 would  
13 affect the remaining six chapters, recommending that the Public Hearing should  
14 be closed and that discussion at the continuance should be limited to issues in  
15 Chapter 50.70.7.b.

16

17 On question, Mr. Sparks advised Commissioner Maks that this issue involves a  
18 Measure 56 Notice.

19

20 Commissioner Maks expressed concern with the cost involved in a Measure 56  
21 Notice, suggesting that that the Public Hearing be closed, with the exception of  
22 TA 2001-0002 – Chapter 50 Update Text Amendment, and that all issues be  
23 continued to the next available meeting date.

24

25 Observing that the upcoming agendas are quite full, Mr. Sparks expressed his  
26 opinion that the next appropriate date for this continuance would be March 20,  
27 2002.

28

29 Commissioner Maks expressed his opinion that this issue should not be very time-  
30 consuming.

31

32 Mr. Sparks suggested that the issue could possibly be addressed at the meeting of  
33 March 13, 2002, noting that a joint Work Session with the Board of Design  
34 Review has been scheduled at that time.

35

36 Commissioner Maks requested clarification of which issues are on the agenda for  
37 March 6, 2002.

38

39 Mr. Sparks informed Commissioner Maks that the Oregon Episcopal School  
40 Marsh Enhancement Project Conditional Use Permit and Tree Preservation Plan  
41 are scheduled for March 6, 2002, as well as the Beaverton High School  
42 Comprehensive Plan Amendment and Street Vacation.

43

44 Commissioner Maks **MOVED** and Commissioner Barnard **SECONDED** a  
45 motion to continue 1) TA 2001-0001 – Chapter 40 Update Text Amendment; 2)  
46 TA 2001-0002 – Chapter 50 Update Text Amendment; 3) TA 2001-0003 –

1 Chapter 10 Update Text Amendment; 4) TA 2001-0004 – Chapter 60 Update Text  
2 Amendment; 5) TA 2001-0005 – Chapter 90 Update Text Amendment; 6) TA  
3 2001-0007 – Beaverton Municipal Code Text Amendment; and 7) TA 2001-0008  
4 – Chapter 20 Update Text Amendment to a date certain of March 13, 2002, with  
5 the discussion to be limited to issues within Chapter 50.

6  
7 Motion **CARRIED**, unanimously.

8  
9 **APPROVAL OF MINUTES:**

10  
11 Minutes of the meeting of January 16, 2002, submitted. Commissioner Maks  
12 **MOVED** and Commissioner Young **SECONDED** a motion that the minutes be  
13 approved as written.

14  
15 Motion **CARRIED**, unanimously.

16  
17 Minutes of the meeting of January 23, 2002, submitted. Chairman Voytilla  
18 requested that the minutes reflect that Alternate Planning Commissioner Steven  
19 Olson was present. Commissioner Johansen **MOVED** and Commissioner Young  
20 **SECONDED** a motion that the minutes be approved, as amended.

21  
22 Motion **CARRIED**, unanimously, with the exception of Commissioner Barnard,  
23 who abstained from voting on this issue.

24  
25 **MISCELLANEOUS BUSINESS:**

26  
27 The meeting adjourned at 10:06 p.m.